IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 68 OF 1989

1. Laxman Dhondi Zurale, since
   deceased, by his legal heirs:
   A) Prakash Laxman Zurale,
   B) Smt.Anubai Laxman Zurale.
2. Shantaram Ganu Kasar, since
   deceased, by his legal heirs:
   A) Ananda Shantaram Kasar,
   B) Jagannath Shantaram Kasar. ... Petitioners

versus

Smt. Yashodabai Sripatrao Shinde ... Respondent

...

Mr. S.V. Sadavarte, for the Petitioners.

Mr. Pratap Patil, for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

16th July 2004

ORAL JUDGMENT :

. This writ petition takes exception to the

judgment and order dated September 29, 1988 in Revision Application No. MRT-KP-53/1985 passed by the Maharashtra Revenue Tribunal, Camp at Kolhapur. Briefly stated, the land in question is agricultural land bearing Survey No. 95 of village Gargoti, taluka Bhudargad, district Kolhapur. The land was owned by Yashodabai, wife of Shripatrao Shinde. The predecessor of the Respondent instituted Suit No. 121 of 1962 for possession under section 29(2) read with section 33(b) of the Bombay Tenancy and Agricultural Lands Act. However, that suit was withdrawn. Later on, another suit came to be filed, being Regular Civil Suit No. 391 of 1976 for relief of possession and injunction against the Petitioner. In the said suit, the Petitioners filed written statement asserting that they were inducted in the suit land as tenant since the year 1960 and were in occupation thereof in that capacity. In view of that plea taken, the Civil Court framed issue regarding the tenancy in the following terms :

> "Whether Defendants Nos. 1 and 2 are the tenants of the suit lands ?"

2. That issue was referred to the Tenancy Authority by the Civil Court in view of the provisions of section 85A of the Act. The Tenancy Authority proceeded with the inquiry in view of the reference made by the Civil Court and upon analysing the evidence on record answered the issue in favour of the Petitioners holding that the Petitioners were tenants in the suit land. The first authority has noted the stand of the Petitioners in the written statement regarding claim of tenancy on and from 1960-61. Against that decision, predecessor of the Respondent carried the matter in appeal before the Special Land Acquisition Officer No. 1 Kolhapur, being Tenancy Appeal No. 14 of 1991. That appeal was allowed by judgment and order dated January 29, 1985. The Appellate Court, on the other hand, took the view that the original Petitioners were partners in cultivation and not tenants. Against that decision, the Petitioners naturally carried the matter in revision before the Tribunal, which, in turn, by the impugned judgment and order, dismissed the revision application. What is relevant to note is that

the Tribunal has affirmed the finding which was recorded by the first authority that the Petitioners were tenants in the suit land since 1960-61 onwards. Indeed, the Tribunal has found that the claim of the Petitioners to be tenants prior to 1957 cannot be accepted, but as mentioned earlier, it has clearly found that the Petitioners were tenants since 1960-61 onwards in the following words :

> " . . . Hence it can be stated that there is ample evidence to prove the applicants to be tenants since 1960-61 onwards. . . ."

After recording that finding, the revisional authority then proceeded to hold that, in that event, the provisions of Section 32O of the Act will apply and since the Petitioners-tenants did not give intimation within the specified time, they were not entitled to maintain the stand that they were tenants in respect of the suit land. This decision is the subject matter of challenge in this writ petition.

3. With the assistance of the Counsel appearing for the parties, I have gone through the relevant record. In the first place, it is to be noted that the stand of the original Petitioners before the Civil Court as stated in the written statement is clearly that they were inducted in the suit land as tenants since 1960-61. The first authority has accepted that plea. The appellate authority, on the other hand, found that the Petitioners were not tenants, but partners in cultivation. The revisional authority, although dismissed the revision filed by the Petitioners, on analysing the evidence has affirmed the view taken by the first authority and has found as of fact that the applicants (Petitioners herein) were tenants in the suit land since 1960-61 onwards. This finding of fact has not been questioned on behalf of the Respondent, owner. Be that as it may, the Tribunal thereafter proceeded to hold that the Respondents cannot maintain that they are tenants, because they failed to give intimation within the specified time. That reasoning is untenable. Merely because no intimation has been given by the Petitioners tenants within the

specified time does not mean that they were not tenants as such. However, in that situation, the consequence under section 32O of the Act would follow, which would result in resumption of the land by the authority. In the present case, however, that question will not arise, because the claim of tenancy is disputed and, therefore,it is only after the final adjudication of the issue of tenancy that the tenants would become entitled to send intimation to the landlord to exercise the right to purchase the suit land under section 32O of the Act. This legal position is no more res integra. In the case of Bhila Keshav Patil and another v. Ganpati Chunilal Kabre and another, reported in A.I.R. 1974 Bom. 10. (Also see recent decision in Gulabrao S. Shinde, reported in 2004(1) Mah.L.J. 873 para 5). In view of the exposition in this decision, until the landlord accepts the statutory tenancy or until his contention denying the tenancy is finally and conclusively overruled, the period of one year provided for sending intimation under section 32O will not commence. By the disposal of this petition, the issue of tenancy would finally and conclusively

stand disposed of. It is only thereafter the tenants would become entitled to send intimation, so as to exercise right of purchase in relation to the suit land in terms of section 32O of the Act. Viewed in this perspective, the view taken by the Tribunal cannot be sustained. In other words, the decision of the appellate authority as well as the Tribunal will have to be set aside to that extent by answering the reference made by the Civil Court in favour of the Petitioners by holding that they are tenants in the suit land since 1960-61 onwards. In view of this declaration, it will be open to the Petitioners to take recourse to such remedy as may be permissible by law. This petition succeeds on the above reasoning. No order as to costs.

4. Certified copy expedited.

5. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)